

Remarks:

Reconsideration and allowance are respectfully requested. Claims 1-15 are pending in the application. Claims 1-12 are rejected. Claims 1-6 have been amended and claims 7-12 have been canceled. Claims 13-15 have been added. No new matter has been added.

Information Disclosure Statement:

The Examiner states that “[t]he listing of references in the specification is not a proper information disclosure statement [and that] 37 C.F.R. §1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP §609.04(a) states ‘the list may not be incorporated into the specification but must be submitted by a separate paper.’” Accordingly, an Information Disclosure Statement, in conformance with these standards, is being filed herewith.

Drawing Objections:

The drawings are objected to under 37 C.F.R. §1.83(a), which requires that the drawings must show every feature of the invention specified in the claims. The Examiner states that “the adjustment mechanism of claim 1, the vehicle roof of claim 1, the convertible of claim 1, the first position of claim 1, the second position of claim 1 and the alternating loads of claim 1 must be shown or the features canceled from the claims.”

The Applicant has amended claim 1 to recite that the adjustment mechanism, the vehicle roof and the convertible are part of the preamble and, as such, are not considered part of the claimed invention.

In addition, a new drawing sheet 1/3 schematically illustrating an adjustment mechanism, including a component, installed in a convertible vehicle, and the component in the first position and the second position and in compliance with 37 C.F.R. §1.121(d) are included herewith. Support for these replacement drawings can be found in Paragraph [00022] and in the claims as originally filed.

Accordingly, withdrawal of the objection is respectfully requested.

§112 Rejection:

Claims 1-12 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 1-6 to address the Examiner's concerns with respect to insufficient antecedent basis and awkward language. Applicant has also canceled claims 7-12. Accordingly, withdrawal of the rejection is therefore respectfully requested.

§102 Rejection:

Claims 1-5 and 12 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by EP '528.

Applicant has amended claim 1 to recite that "the component includes: a recess and a flange edge surrounding the recess, wherein the recess and the flange edge surrounding the recess are located in a limited load area of the component." Support for this amendment can be found in Paragraph [0022] of the Application as filed, which states, in part that "[t]he component 1 ... has flange edges 3, both in the region of its outer contour and in the region of several recesses 2" and in Paragraph [0029] of the Application as filed, which states, in part that "[t]he component 1 shown in Fig. 1 is designed in the areas with limited load ... with recesses 2."

EP '528 simply does not disclose, teach or suggest a component that includes "... a recess and a flange edge surrounding the recess, wherein the recess and the flange edge surrounding the recess are located in a limited load area of the component," as required by the claimed invention as amended.

Instead, EP '528 merely teaches an open roof construction for a vehicle.

As such, in light of the present amendment, Applicant believes this rejection to be overcome and withdrawal of the rejection is respectfully requested.

Claims 1-2, 4-8 and 10-11 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by DE '439.

As discussed above, Applicant has amended claim 1 to recite that "... the component includes: a recess and a flange edge surrounding the recess, wherein the recess and the flange edge surrounding the recess are located in a limited load area of the component." In addition, Applicant has amended claim 1 to recite that "... the component is a sheet-metal part having an open profile produced by a sheet deformation process." Support for this amendment can be

found in Paragraph [0014], which states, in part, that the component "... is preferable formed at least in some areas with an open profile."

DE '439 also simply does not disclose, teach or suggest a component that includes "a recess and a flange edge surrounding the recess, wherein the recess and the flange edge surrounding the recess are located in a limited load area of the component," nor does DE '439 disclose, teach or suggest that "the component is sheet-metal part having an open profile produced by a sheet deformation process," both of which are required by the claimed invention as amended.

Instead, DE '439 teaches a component with a closed tube-like cross-section or "a hollow element formed from a semi-finished product by means of an internal high pressure forming process." *See Abstract.*

As such, in light of the present amendment, Applicant believes this rejection to be overcome and withdrawal of the rejection is respectfully requested.

§103 Rejection:

Claims 6-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over EP '528 in view of DE '439. The Examiner states that while "EP '528 lacks the specific material[,] DE '439 teaches the use of steel or aluminum for pivot rods [and that] [i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided steel or aluminum as taught by DE '439 for component of EP '528 in order to advantageously alter the characteristics of the component without altering the shape."

A proper rejection under 35 USC §103(a) requires that the Examiner establish *prima facie* obviousness. As recited in the MPEP, "[t]he Examiner bears the initial burden of factually supporting any prima facie conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." MPEP §2142.

The key to supporting any rejection under 35 U.S.C. §103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. §103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to

support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). MPEP §2142.

For a rejection under 35 U.S.C. § 103(a) to be proper, the Examiner must establish an "apparent reason" to modify the reference or to combine reference teachings. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1395-97 (2007). The Examiner has failed to show where the prior art provides an "apparent reason" to modify the reference or combine the teachings.

As discussed above, EP '528 simply does not disclose, teach or suggest a component that includes "... a recess and a flange edge surrounding the recess, wherein the recess and the flange edge surrounding the recess are located in a limited load area of the component," as required by the claimed invention as amended. In addition, also as discussed above, DE '439 also simply does not disclose, teach or suggest a component that includes "a recess and a flange edge surrounding the recess, wherein the recess and the flange edge surrounding the recess are located in a limited load area of the component." As such, the modification of EP '528 in view of DE '439 still does not serve to remedy the initial deficiency of EP '528. Furthermore, there is no "apparent reason" to modify the combined references to provide these limitations added by amendment. Accordingly, the claimed invention, as amended, is patentable over EP '528 in view of DE '439 and withdrawal of the rejection is therefore respectfully requested.

Conclusion

All rejections and objections having been addressed, it is therefore respectfully submitted that the present application is in condition for allowance, and a Notice to that effect is earnestly solicited.

Respectfully submitted,

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